

## HOUSE BILL NO. 429

INTRODUCED BY GUTSCHE, MUSGROVE, HARRIS, COHENOUR

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO ENFORCEMENT PROCEDURES OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY; PROVIDING UNIFORM FACTORS FOR DETERMINING PENALTIES AND UNIFORM VENUE FOR PENALTY ACTIONS; AUTHORIZING THE DEPARTMENT TO USE PRIVATE SERVICES TO COLLECT PENALTIES, FEES, LATE FEES, AND INTEREST; REVISING THE STATUTE OF LIMITATIONS FOR ADMINISTRATIVE PENALTIES FOR AIR QUALITY VIOLATIONS; AMENDING SECTIONS 75-2-401, 75-2-413, 75-2-514, 75-2-515, 75-5-611, 75-5-631, 75-6-109, 75-6-114, 75-10-228, 75-10-417, 75-10-424, 75-10-542, 75-10-1222, 75-10-1223, 75-11-223, 75-11-516, 75-11-525, 75-20-408, 76-4-109, 82-4-141, 82-4-254, 82-4-361, AND 82-4-441, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Penalty factors.** (1) In determining the amount of an administrative or civil penalty to which subsection (4) applies, the department of environmental quality or the district court, as appropriate, shall take into account the following factors:

- (a) the nature, extent, and gravity of the violation;
- (b) the circumstances of the violation;
- (c) the violator's prior history of any violation, which:
  - (i) must be a violation of a requirement under the authority of the same chapter and part as the violation for which the penalty is being assessed;
  - (ii) must be documented in an administrative order or a judicial order or judgment issued within 3 years prior to the date of the occurrence of the violation for which the penalty is being assessed; and
  - (iii) may not, at the time that the penalty is being assessed, be undergoing or subject to administrative appeal or judicial review;
- (d) the economic benefit or savings resulting from the violator's action;
- (e) the violator's good faith and cooperation;
- (f) the amounts voluntarily expended by the violator, beyond what is required by law or order, to address

1 or mitigate the violation or impacts of the violation; and

2 (g) other matters that justice may require.

3 (2) After the amount of a penalty is determined under (1), the department of environmental quality or  
4 the district court, as appropriate, may consider the violator's financial ability to pay the penalty and may institute  
5 a payment schedule or suspend all or a portion of the penalty.

6 (3) The department of environmental quality may accept a supplemental environmental project as  
7 mitigation for a portion of the penalty. For purposes of this section, a "supplemental environmental project" is  
8 an environmentally beneficial project that a violator agrees to undertake in settlement of an enforcement action  
9 but which the violator is not otherwise legally required to perform.

10 (4) This section applies to penalties assessed by the department of environmental quality or the district  
11 court under Title 75, chapters 2, 5, 6, 11, and 20; Title 75, chapter 10, parts 2, 4, 5, and 12; and Title 76, chapter  
12 4.

13 (5) The board of environmental review and the department of environmental quality may, for the statutes  
14 listed in subsection (4) for which each has rulemaking authority, adopt rules to implement this section.

15  
16 **NEW SECTION. Section 2. Collection of penalties, fees, late fees, and interest.** (1) If the  
17 department of environmental quality is unable to collect penalties, fees, late fees, or interest assessed pursuant  
18 to the provisions of Title 75 or Title 76, chapter 4, the department of environmental quality may assign the debt  
19 to a collection service or transfer the debt to the department of revenue pursuant to Title 17, chapter 4, part 1.

20 (2) (a) The reasonable collection costs of a collection service, if approved by the department of  
21 environmental quality, or assistance costs charged the department of environmental quality by the department  
22 of revenue pursuant to 17-4-103(3) may be added to the debt for which collection is being sought.

23 (b) (i) All money collected by the department of revenue is subject to the provisions of 17-4-106.

24 (ii) All money collected by a collection service must be paid to the department of environmental quality  
25 and deposited in the general fund or the accounts specified in statute for the assessed penalties, fees, late fees,  
26 or interest, except that the collection service may retain those collection costs or, if the total debt is not collected,  
27 that portion of collection costs that are approved by the department.

28  
29 **NEW SECTION. Section 3. Penalty factors.** (1) In determining the amount of an administrative or civil  
30 penalty assessed under the statutes listed in subsection (4), the department of environmental quality or the

1 district court, as appropriate, shall take into account the following factors:

2 (a) the nature, extent, and gravity of the violation;

3 (b) the circumstances of the violation;

4 (c) the violator's prior history of any violation, which:

5 (i) must be a violation of a requirement under the authority of the same chapter and part as the violation  
6 for which the penalty is being assessed;

7 (ii) must be documented in an administrative order or a judicial order or judgment issued within 3 years  
8 prior to the date of the occurrence of the violation for which the penalty is being assessed; and

9 (iii) may not, at the time that the penalty is being assessed, be undergoing or subject to administrative  
10 appeal or judicial review;

11 (d) the economic benefit or savings resulting from the violator's action;

12 (e) the violator's good faith and cooperation;

13 (f) the amounts voluntarily expended by the violator, beyond what is required by law or order, to address  
14 or mitigate the violation or impacts of the violation; and

15 (g) other matters that justice may require.

16 (2) Except for penalties assessed under 82-4-254, after the amount of a penalty is determined under  
17 (1), the department of environmental quality or the district court, as appropriate, may consider the violator's  
18 financial ability to pay the penalty and may institute a payment schedule or suspend all or a portion of the  
19 penalty.

20 (3) Except for penalties assessed under 82-4-254, the department of environmental quality may accept  
21 a supplemental environmental project as mitigation for a portion of the penalty. For purposes of this section,  
22 a "supplemental environmental project" is an environmentally beneficial project that a violator agrees to  
23 undertake in settlement of an enforcement action but which the violator is not otherwise legally required to  
24 perform.

25 (4) This section applies to penalties assessed by the department of environmental quality or the district  
26 court under 82-4-141, 82-4-254, 82-4-361, and 82-4-441.

27 (5) The board of environmental review and the department of environmental quality may, for the statutes  
28 listed in subsection (4) for which each has rulemaking authority, adopt rules to implement this section.

29  
30 **NEW SECTION. Section 4. Collection of penalties, fees, late fees, and interest.** (1) If the

department of environmental quality is unable to collect penalties, fees, late fees, or interest assessed pursuant to the provisions of Title 82, chapter 4, the department of environmental quality may assign the debt to a collection service or transfer the debt to the department of revenue pursuant to Title 17, chapter 4, part 1.

(2) (a) The reasonable collection costs of a collection service, if approved by the department of environmental quality, or assistance costs charged the department of environmental quality by the department of revenue pursuant to 17-4-103(3) may be added to the debt for which collection is being sought.

(b) (i) All money collected by the department of revenue is subject to the provisions of 17-4-106.

(ii) All money collected by a collection service must be paid to the department of environmental quality and deposited in the general fund or the accounts specified in statute for the assessed penalties, fees, late fees, or interest, except that the collection service may retain those collection costs or, if the total debt is not collected, that portion of collection costs that are approved by the department.

**Section 5.** Section 75-2-401, MCA, is amended to read:

**"75-2-401. Enforcement -- notice -- order for corrective action -- administrative penalty.** (1) When the department believes that a violation of this chapter, a rule adopted under this chapter, or a condition or limitation imposed by a permit issued pursuant to this chapter has occurred, it may cause written notice to be served personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the provision of this chapter, the rule, or the permit condition or limitation alleged to be violated and the facts alleged to constitute a violation. The notice may include an order to take necessary corrective action within a reasonable period of time stated in the order or an order to pay an administrative penalty, or both. The order becomes final unless, within 30 days after the notice is received, the person named requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing.

(2) If, after a hearing held under subsection (1), the board finds that violations have occurred, it shall issue an appropriate order for the prevention, abatement, or control of the emissions involved or for the taking of other corrective action or assess an administrative penalty, or both. As appropriate, an order issued as part of a notice or after a hearing may prescribe the date by which the violation must cease; time limits for particular action in preventing, abating, or controlling the emissions; or the date by which the administrative penalty must be paid. If, after a hearing on an order contained in a notice, the board finds that a violation has not occurred or is not occurring, it shall rescind the order.

(3) (a) An action initiated under this section may include an administrative civil penalty of not more than

1 \$10,000 for each day of each violation, not to exceed a total of \$80,000. If an order issued by the board under  
2 this section requires the payment of an administrative civil penalty, the board shall state findings and conclusions  
3 describing the basis for its penalty assessment.

4 (b) Administrative penalties collected under this section must be deposited in the alternative energy  
5 revolving loan account established in 75-25-101.

6 (c) Penalties imposed by an administrative order under this section may not be assessed for any day  
7 of violation that occurred more than ~~42 months~~ 2 years prior to the issuance of the initial notice and order by the  
8 department under subsection (1).

9 (d) In determining the amount of penalty to be assessed for an alleged violation under this section, the  
10 department or board, as appropriate, shall consider the penalty factors in [section 1].:

11 ~~—— (i) the alleged violator's ability to pay and the economic impact of the penalty on the alleged violator;~~

12 ~~—— (ii) the alleged violator's full compliance history and good faith efforts to comply;~~

13 ~~—— (iii) the duration of the violation as established by any credible evidence, including evidence other than~~  
14 ~~the applicable test method;~~

15 ~~—— (iv) payment by the violator of penalties previously assessed for the same violation;~~

16 ~~—— (v) the economic benefit of noncompliance;~~

17 ~~—— (vi) the seriousness of the violation; and~~

18 ~~—— (vii) other matters as justice may require.~~

19 (e) The department may bring a judicial action to enforce a final administrative order issued pursuant  
20 to this section. The action must be filed in the district court of the first judicial district, Lewis and Clark County,  
21 or in the district court of the county in which the violation occurred OR, IF MUTUALLY AGREED ON BY THE PARTIES IN  
22 THE ACTION, IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT, LEWIS AND CLARK COUNTY.

23 (4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part  
24 6, apply to a hearing conducted under this section.

25 (5) Instead of issuing the order provided for in subsection (1), the department may either:

26 (a) require that the alleged violators appear before the board for a hearing at a time and place specified  
27 in the notice and answer the charges complained of; or

28 (b) initiate action under 75-2-412 or 75-2-413.

29 (6) This chapter does not prevent the board or department from making efforts to obtain voluntary  
30 compliance through warning, conference, or any other appropriate means.

(7) In connection with a hearing held under this section, the board may and on application by a party shall compel the attendance of witnesses and the production of evidence on behalf of the parties."

**Section 6.** Section 75-2-413, MCA, is amended to read:

**"75-2-413. Civil penalties -- ~~venue out-of-state litigants~~ -- effect of action -- presumption of continuing violation under certain circumstances.** (1) (a) A person who violates any provision of this chapter, a rule adopted under this chapter, or any order or permit made or issued under this chapter is subject to a civil penalty not to exceed \$10,000 ~~per~~ for each violation. Each day of each violation constitutes a separate violation. The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty. The civil penalty is in lieu of the criminal penalty provided for in 75-2-412, except for civil penalties for violation of the operating permit program required by Subchapter V of the federal Clean Air Act.

(b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty factors in [section 1].

(2) (a) Action under subsection (1) is not a bar to enforcement of this chapter or of a rule, order, or permit made or issued under this chapter by injunction or other appropriate civil remedies.

(b) An action under subsection (1) or to enforce this chapter or a rule, order, or permit made or issued under this chapter may be brought in the district court of ~~the first judicial district, Lewis and Clark County, or in the district court of~~ any county where a violation occurs or is threatened ~~if the defendant cannot be located in Montana~~ OR, IF MUTUALLY AGREED ON BY THE PARTIES IN THE ACTION, IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT, LEWIS AND CLARK COUNTY.

(3) If the department has notified a person operating a commercial hazardous waste incinerator of a violation and if the department makes a prima facie showing that the conduct or events giving rise to the violations are likely to have continued or recurred past the date of notice, the days of violation are presumed to include the date of the notice and every day after the notice until the person establishes that continuous compliance has been achieved. This presumption may be overcome to the extent that the person operating a commercial hazardous waste incinerator can prove by a preponderance of evidence that there were intervening days when a violation did not occur, that the violation was not continuing in nature, or that the telemetering device was compromised or otherwise tampered with.

(4) Money collected under this section must be deposited in the alternative energy revolving loan account established in 75-25-101. This subsection does not apply to money collected by an approved local air pollution control program."

**Section 7.** Section 75-2-514, MCA, is amended to read:

**"75-2-514. Civil penalties -- venue for actions to recover disposition of civil penalties.** (1) (a) A district court may assess a civil penalty of not more than \$25,000 a day upon a person that violates any provision of this part, a rule adopted under this part, or a permit or order issued under this part. In the case of a continuing violation, each day the violation continues constitutes a separate violation.

(b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty factors in [section 1].

(2) An action under this section is not a bar to enforcement by injunction or other appropriate civil or administrative remedies.

(3) Penalties provided for in subsection (1) are recoverable in an action brought by the department. The action must be filed in the district court of the first judicial district, Lewis and Clark County, or in the district court of the county in which the violation occurred OR, IF MUTUALLY AGREED ON BY THE PARTIES IN THE ACTION, IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT, LEWIS AND CLARK COUNTY."

**Section 8.** Section 75-2-515, MCA, is amended to read:

**"75-2-515. Administrative enforcement.** (1) The department may deny, suspend, or revoke the accreditation of a person that:

(a) fraudulently or deceptively obtains or attempts to obtain accreditation;

(b) fails to meet the qualifications for accreditation or fails to comply with the requirements of this part, a rule adopted under this part, or a permit or order issued under this part; or

(c) fails to meet an applicable federal or state standard for asbestos projects.

(2) When the department believes that a violation of this part, a rule adopted under this part, or a permit or order issued under this part has occurred, it may serve written notice of the violation personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the provision of this part or the rule, permit, or order alleged to be violated and the facts alleged to constitute a violation. The notice may include an order to take necessary corrective action within a reasonable period of time stated in the order, ~~or~~ an order to

1 pay an administrative civil penalty, or both. An order becomes final unless, within 30 days after the order is  
2 received, the person that has been named requests, in writing, a hearing before the board.

3 (3) On receipt of a hearing request, the board shall schedule a hearing. The contested case provisions  
4 of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to any hearing conducted under  
5 this section. If, after a hearing, the board finds that a violation has not occurred or is not occurring, it shall rescind  
6 the order.

7 (4) (a) An action initiated under this section may include an administrative civil penalty of not more than  
8 \$10,000 for each day of each violation, not to exceed a total of \$80,000. Any order issued by the department  
9 under this section requiring payment of an administrative civil penalty must specify the basis for the penalty  
10 assessment.

11 (b) A penalty may not be assessed under this section for any day of violation that occurred more than  
12 3 years prior to the department issuing the order requiring payment of the penalty.

13 (c) In determining the amount of a penalty assessed to a person under this section, the department shall  
14 consider the penalty factors in [section 1].:

15 ~~—— (i) the seriousness of the violation;~~

16 ~~—— (ii) the duration of the violation;~~

17 ~~—— (iii) any economic benefit derived from the violation;~~

18 ~~—— (iv) the person's good faith efforts to comply with the requirements in question;~~

19 ~~—— (v) the person's compliance history;~~

20 ~~—— (vi) the person's ability to pay a penalty; and~~

21 ~~—— (vii) other matters as justice may require.~~

22 (5) In addition to or instead of issuing an order under subsection (2), the department may:

23 (a) require the alleged violator to appear before the board for a hearing at a time and place specified  
24 in the notice of hearing to answer the charges complained of; or

25 (b) initiate action under 75-2-514."

26  
27 **Section 9.** Section 75-5-611, MCA, is amended to read:

28 **"75-5-611. Violation of chapter -- administrative actions and penalties -- notice and hearing. (1)**

29 When the department has reason to believe that a violation of this chapter, a rule adopted under this chapter,  
30 or a condition of a permit or authorization required by a rule adopted under this chapter has occurred, it may



1 have a written notice letter served personally or by certified mail on the alleged violator or the violator's agent.

2 The notice letter must state:

3 (a) the provision of statute, rule, permit, or approval alleged to be violated;

4 (b) the facts alleged to constitute the violation;

5 (c) the specific nature of corrective action that the department requires;

6 (d) as applicable, the amount of the administrative penalty that will be assessed by order under  
7 subsection (2) if the corrective action is not taken within the time provided under subsection (1)(e); and

8 (e) as applicable, the time within which the corrective action is to be taken or the administrative penalty  
9 will be assessed. For the purposes of this chapter, service by certified mail is complete on the date of receipt.

10 Except as provided in subsection (2)(a)(ii), an administrative penalty may not be assessed until the provisions  
11 of subsection (1) have been complied with.

12 (2) (a) The department may issue an administrative notice and order in lieu of the notice letter provided  
13 under subsection (1) if the department's action:

14 (i) does not involve assessment of an administrative penalty; or

15 (ii) seeks an administrative penalty only for an activity that it believes and alleges has violated or is  
16 violating 75-5-605.

17 (b) A notice and order issued under this section must meet all of the requirements specified in  
18 subsection (1).

19 (3) In a notice and order given under subsection (1), the department may require the alleged violator  
20 to appear before the board for a public hearing and to answer the charges. The hearing must be held no sooner  
21 than 15 days after service of the notice and order, except that the board may set an earlier date for hearing if  
22 it is requested to do so by the alleged violator. The board may set a later date for hearing at the request of the  
23 alleged violator if the alleged violator shows good cause for delay.

24 (4) If the department does not require an alleged violator to appear before the board for a public  
25 hearing, the alleged violator may request the board to conduct the hearing. The request must be in writing and  
26 must be filed with the department no later than 30 days after service of a notice and order under subsection (2).  
27 If a request is filed, a hearing must be held within a reasonable time. If a hearing is not requested within 30 days  
28 after service upon the alleged violator, the opportunity for a contested case appeal to the board under Title 2,  
29 chapter 4, part 6, is waived.

30 (5) If a contested case hearing is held under this section, it must be public and must be held in the

1 county in which the violation is alleged to have occurred or in Lewis and Clark County.

2 (6) (a) After a hearing, the board shall make findings and conclusions that explain its decision.

3 (b) If the board determines that a violation has occurred, it shall also issue an appropriate order for the  
4 prevention, abatement, or control of pollution, the assessment of administrative penalties, or both.

5 (c) If the order requires abatement or control of pollution, the board shall state the date or dates by  
6 which a violation must cease and may prescribe timetables for necessary action in preventing, abating, or  
7 controlling the pollution.

8 (d) If the order requires payment of an administrative penalty, the board shall explain how it determined  
9 the amount of the administrative penalty.

10 (e) If the board determines that a violation has not occurred, it shall declare the department's notice  
11 void.

12 (7) The alleged violator may petition the board for a rehearing on the basis of new evidence, which  
13 petition the board may grant for good cause shown.

14 (8) Instead of issuing an order, the board may direct the department to initiate appropriate action for  
15 recovery of a penalty under 75-5-631, 75-5-632, 75-5-633, or 75-5-635.

16 (9) (a) An action initiated under this section may include an administrative penalty of not more than  
17 \$10,000 for each day of each violation; however, the maximum penalty may not exceed \$100,000 for any related  
18 series of violations.

19 (b) Administrative penalties collected under this section must be deposited in the general fund.

20 (c) In determining the amount of penalty to be assessed to a person, the department and board shall  
21 consider the penalty factors in [section 1] ~~criteria stated in 75-5-631(4)~~ and rules promulgated under 75-5-201.

22 (d) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title  
23 2, chapter 4, part 6, apply to a hearing conducted under this section."  
24

25 **Section 10.** Section 75-5-631, MCA, is amended to read:

26 **"75-5-631. Civil penalties -- injunctions not barred -- venue.** (1) In an action initiated by the  
27 department to collect civil penalties against a person who is found to have violated this chapter or a rule, permit,  
28 effluent standard, or order issued under the provisions of this chapter, the person is subject to a civil penalty not  
29 to exceed \$25,000. Each day of violation constitutes a separate violation.

30 (2) Action under this section does not bar enforcement of this chapter or of rules or orders issued under

1 it by injunction or other appropriate remedy.

2 (3) The department shall institute and maintain enforcement proceedings in the name of the state.  
3 Penalties are recoverable in an action brought by the department. The action must be brought in the district  
4 court of the first judicial district, Lewis and Clark County, or in the district court of the county in which the violation  
5 occurred OR, IF MUTUALLY AGREED ON BY THE PARTIES IN THE ACTION, IN THE DISTRICT COURT OF THE FIRST JUDICIAL  
6 DISTRICT, LEWIS AND CLARK COUNTY.

7 (4) In ~~an action seeking~~ determining the amount of penalties under this section, the ~~department~~ district  
8 court shall take into account the penalty factors in [section 1]. ~~following factors in determining an appropriate~~  
9 ~~settlement or judgment, as appropriate:~~

10 ~~—— (a) the nature, circumstances, extent, and gravity of the violation; and~~

11 ~~—— (b) with respect to the violator, the violator's ability to pay and prior history of violations, the economic~~  
12 ~~benefit or savings, if any, to the violator resulting from the violator's action, the amounts voluntarily expended~~  
13 ~~by the violator to address or mitigate the violation or impacts of the violation to waters of the state, and other~~  
14 ~~matters that justice may require."~~

15  
16 **Section 11.** Section 75-6-109, MCA, is amended to read:

17 **"75-6-109. Administrative enforcement.** (1) If the department believes that a violation of this part, a  
18 rule adopted under this part, or a condition of approval issued under this part has occurred, it may serve written  
19 notice of the violation, by certified mail, on the alleged violator or the violator's agent. The notice must specify  
20 the provision of this part, the rule, or the condition of approval alleged to have been violated and the facts  
21 alleged to constitute a violation. The notice must include an order to take necessary corrective action within a  
22 reasonable period of time. The time period must be stated in the order. Service by mail is complete on the date  
23 of filing.

24 (2) If the alleged violator does not request a hearing before the board within 30 days of the date of  
25 service, the order becomes final. Failure to comply with a final order may subject the violator to an action  
26 commenced pursuant to 75-6-104, 75-6-113, or 75-6-114.

27 (3) If the alleged violator requests a hearing before the board within 30 days of the date of service, the  
28 board shall schedule a hearing. After the hearing is held, the board may:

29 (a) affirm or modify the department's order issued under subsection (1) if the board finds that a violation  
30 has occurred; or

(b) rescind the department's order if the board finds that a violation has not occurred.

(4) An order issued by the department or the board may set a date by which the violation must cease and set a time limit for action to correct a violation.

(5) As an alternative to issuing an order pursuant to subsection (1), the department may:

(a) require the alleged violator to appear before the board for a hearing, at a time and place specified in the notice, to answer the charges complained of; or

(b) initiate an action under 75-6-111(2), 75-6-113, or 75-6-114.

(6) (a) An action initiated under this part may include an administrative penalty not to exceed:

(i) \$1,000 for each day of a violation pertaining to a public water system, other than a water hauler or a water bottling plant, that serves a population of more than 10,000; and

(ii) \$500 for each day of violation for other violations.

(b) Administrative penalties collected under this section must be deposited in the state general fund.

(7) In determining the amount of penalty to be assessed to a person, the department or the board, as appropriate, shall consider the penalty factors in [section 1] ~~criteria stated in 75-6-114~~ and the rules promulgated under 75-6-103(2)(i).

(8) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing under 75-6-108 or this section."

**Section 12.** Section 75-6-114, MCA, is amended to read:

**"75-6-114. Civil penalty.** (1) In an action initiated by the department to collect civil penalties against a person who is found to have violated this part or a rule, order, or condition of approval issued under this part, the person is subject to a civil penalty not to exceed \$10,000. The action must be filed in the district court of the first judicial district, Lewis and Clark County, or in the district court of the county in which the violation occurred OR, IF MUTUALLY AGREED ON BY THE PARTIES IN THE ACTION, IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT, LEWIS AND CLARK COUNTY.

(2) Each day of violation constitutes a separate violation.

(3) Action under this section does not bar enforcement of this part or a rule, order, or condition of approval issued under this part by injunction or other appropriate remedy.

(4) When seeking penalties under this section, the department shall take into account the penalty factors in [section 1] ~~following factors~~ in determining an appropriate settlement or judgment, as appropriate:

1 ~~\_\_\_\_\_ (a) the nature, circumstances, extent, and gravity of the violation; and~~  
2 ~~\_\_\_\_\_ (b) with respect to the violator, the violator's ability to pay, prior history of violations, the economic~~  
3 ~~benefit or savings, if any, to the violator resulting from the violator's action, the amounts voluntarily expended~~  
4 ~~by the violator to address or mitigate the violation or impacts of the violation to waters of the state, and other~~  
5 ~~matters that justice may require.~~

6 (5) Civil penalties collected pursuant to this section must be deposited in the state general fund."  
7

8 **Section 13.** Section 75-10-228, MCA, is amended to read:

9 **"75-10-228. Civil penalties.** (1) A person who violates any provision of this part, a rule adopted under  
10 this part, or a license provision is subject to a civil penalty not to exceed \$1,000. Each day of violation constitutes  
11 a separate violation.

12 (2) The department may institute and maintain in the name of the state any enforcement proceedings  
13 under this section. Upon request of the department, the attorney general or the county attorney of the county  
14 where the violation occurred shall petition the district court to impose, assess, and recover the civil penalty.

15 (3) Penalties assessed under this section must be determined in accordance with the penalty factors  
16 in [section 1]. An action to recover penalties must be filed in the district court of the first judicial district, Lewis  
17 and Clark County, or in the district court of the county in which the violation occurred OR, IF MUTUALLY AGREED  
18 ON BY THE PARTIES IN THE ACTION, IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT, LEWIS AND CLARK COUNTY.

19 ~~(3)(4)~~ (4) Fines and penalties collected for violations of this part must be deposited in the solid waste  
20 management account provided for in 75-10-117."  
21

22 **Section 14.** Section 75-10-417, MCA, is amended to read:

23 **"75-10-417. Civil penalties.** (1) ~~Any~~ A person who violates any provision of this part, a rule adopted  
24 under this part, an order of the department or the board, or a permit is subject to a civil penalty not to exceed  
25 \$10,000 ~~per for each~~ violation. Each day of violation constitutes a separate violation. Penalties assessed under  
26 this section must be determined in accordance with the penalty factors in [section 1].

27 (2) The department may institute and maintain in the name of the state any enforcement proceedings  
28 under this section. Upon request of the department, the attorney general or the county attorney of the county  
29 of violation shall petition the district court to impose, assess, and recover the civil penalty. An action to recover  
30 penalties must be brought in the district court of the first judicial district, Lewis and Clark County, or in the district

1 court of the county in which the violation occurred OR, IF MUTUALLY AGREED ON BY THE PARTIES IN THE ACTION, IN  
2 THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT, LEWIS AND CLARK COUNTY.

3 (3) Action under this section does not bar:

4 (a) enforcement of this part, rules adopted under this part, orders of the department or the board, or  
5 permits by injunction or other appropriate remedy; or

6 (b) action under 75-10-418.

7 (4) Money collected under this section ~~shall~~ must be deposited in the state general fund."  
8

9 **Section 15.** Section 75-10-424, MCA, is amended to read:

10 **"75-10-424. Administrative penalty.** (1) The department may assess a person who violates a provision  
11 of this part; or a rule adopted under this part; an administrative penalty, not to exceed \$10,000 for each violation.  
12 Each day of violation constitutes a separate violation, but the maximum penalty may not exceed \$100,000 for  
13 any related series of violations. Assessment of an administrative penalty under this section must be made in  
14 conjunction with an order or administrative action authorized by this chapter.

15 (2) An administrative penalty may not be assessed under this section unless the alleged violator is given  
16 notice and opportunity for a hearing before the board pursuant to Title 2, chapter 4, part 6.

17 (3) In determining the appropriate amount of an administrative penalty, the department shall consider  
18 the penalty factors in [section 1]:

19 ~~—— (a) the gravity and the number of violations;~~

20 ~~—— (b) the degree of care exercised by the alleged violator;~~

21 ~~—— (c) whether significant harm resulted to the public health or the environment; and~~

22 ~~—— (d) the degree of potential significant harm to the public health or the environment.~~

23 (4) If the department is unable to collect the administrative penalty or if a person fails to pay all or any  
24 portion of the administrative penalty as determined by the department, the department may ~~seek~~ file an action  
25 to recover the amount in an appropriate not paid. The action must be brought in the district court of the first  
26 judicial district, Lewis and Clark county, or in the district court of the county in which the violation occurred OR,  
27 IF MUTUALLY AGREED ON BY THE PARTIES IN THE ACTION, IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT, LEWIS  
28 AND CLARK COUNTY.

29 (5) Action under this section does not bar action under 75-10-413 through 75-10-418 or any other  
30 appropriate remedy.

(6) Administrative penalties collected under this section must be deposited in the state general fund."

**Section 16.** Section 75-10-542, MCA, is amended to read:

**"75-10-542. Penalties.** (1) A person who ~~willfully~~ purposely or knowingly violates this part, except 75-10-520, is guilty of a misdemeanor and upon conviction shall be fined an amount not to exceed \$250, be imprisoned in the county jail for a term not to exceed 30 days, or both.

(2) A person who violates this part, except 75-10-520, a rule of the department, or an order issued as provided in this part ~~shall be~~ is subject to a civil penalty of not more than \$50. Each day upon which a violation of this part or a rule or order occurs is a separate violation.

(3) Penalties assessed under subsection (2) must be determined in accordance with the penalty factors in [section 1]. An action to recover penalties must be brought in the district court of the first judicial district, Lewis and Clark County, or in the district court of the county in which the violation occurred OR, IF MUTUALLY AGREED ON BY THE PARTIES IN THE ACTION, IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT, LEWIS AND CLARK COUNTY."

**Section 17.** Section 75-10-1222, MCA, is amended to read:

**"75-10-1222. Administrative enforcement.** (1) If the department believes that a violation of this part, a rule adopted under this part, or an order issued under this part has occurred, it may serve written notice of the violation, by certified mail, on the alleged violator or the violator's agent. The notice must specify the provision of this part, the rule, or the condition of approval alleged to have been violated and the facts alleged to constitute a violation. The notice must include an order to take necessary corrective action within a reasonable period of time. The time period must be stated in the order. Service is complete on the date of mailing.

(2) If the alleged violator does not request a hearing before the board within 30 days of the date of service, the order is final. Failure to comply with a final order may subject the violator to an action commenced pursuant to 75-10-1221.

(3) If the alleged violator requests a hearing before the board within 30 days of the date of service, the board shall schedule a hearing. After the hearing is held, the board may:

(a) affirm or modify the department's order issued under subsection (1) if the board finds that a violation has occurred; or

(b) rescind the department's order if the board finds that a violation has not occurred.

(4) An order issued by the department or the board may set a date by which the violation must cease

1 and set a time limit for the violator to correct the violation.

2 (5) (a) An action initiated by the department under this section may include an administrative penalty  
3 not to exceed \$500 for each day of violation. Administrative penalties collected under this section must be  
4 deposited in the account provided for in 75-10-1203.

5 (b) Penalties assessed under this section must be determined in accordance with the penalty factors  
6 in [section 1].

7 (6) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title  
8 2, chapter 4, part 6, apply to a hearing under this section."

9  
10 **Section 18.** Section 75-10-1223, MCA, is amended to read:

11 **"75-10-1223. Penalties and fines.** (1) A person who disposes of septage in violation of 75-10-1210  
12 or of the standards adopted pursuant to 75-10-1202 is guilty of a misdemeanor and upon conviction shall be  
13 fined an amount not to exceed \$500.

14 (2) (a) A person who violates this part or a rule or order adopted pursuant to this part is subject to a civil  
15 penalty of not more than \$500. Each day that violation of this part, a rule of the department, or an order issued  
16 pursuant to this part occurs constitutes a separate violation. The department or the county attorney of the county  
17 in which the violation occurred may file an action to collect the penalty.

18 (b) Penalties assessed under this subsection (2) must be determined in accordance with the penalty  
19 factors in [section 1]. An action to recover penalties must be brought in the district court of the first judicial  
20 district, Lewis and Clark County, or in the district court of the county in which the violation occurred OR, IF  
21 MUTUALLY AGREED ON BY THE PARTIES IN THE ACTION, IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT, LEWIS  
22 AND CLARK COUNTY.

23 (3) Penalties collected by the department under this section must be deposited in the environmental  
24 rehabilitation and response account in the state special revenue fund provided for in 75-1-110. Fines and  
25 penalties collected by a county must be deposited in the general fund of the county."

26  
27 **Section 19.** Section 75-11-223, MCA, is amended to read:

28 **"75-11-223. Civil penalties.** (1) (a) Any A person who violates any provision of this part, a rule adopted  
29 under this part, or an order of the department or the board is subject to a civil penalty not to exceed \$10,000 ~~per~~  
30 for each violation. If an installer or an inspector who is an employee is in violation, the employer of that installer



1 or that inspector is the entity that is subject to the provisions of this section unless the violation is the result of  
2 a grossly negligent or willful act. Each day of violation of this part, a rule adopted under this part, or an order  
3 constitutes a separate violation.

4 (b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty  
5 factors in [section 1].

6 (2) The department may institute and maintain in the name of the state any enforcement proceedings  
7 under this section. Upon request of the department, the attorney general or the county attorney of the county  
8 where the violation occurred shall petition the district court to impose, assess, and recover the civil penalty. An  
9 action to recover penalties must be brought in the district court of the first judicial district, Lewis and Clark  
10 County, or in the district court of the county in which the violation occurred OR, IF MUTUALLY AGREED ON BY THE  
11 PARTIES IN THE ACTION, IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT, LEWIS AND CLARK COUNTY.

12 (3) Action under this section does not bar:

13 (a) enforcement of this part, rules adopted under this part, orders of the department or the board, or  
14 terms of a license or permit by injunction or other appropriate remedy; or

15 (b) action under 75-11-224."

16  
17 **Section 20.** Section 75-11-516, MCA, is amended to read:

18 **"75-11-516. Civil penalties.** (1) (a) A person who violates any provision of this part, a rule adopted  
19 under this part, or an order of the department or the board is subject to a civil penalty not to exceed \$10,000 for  
20 each violation. Each day of violation constitutes a separate violation.

21 (b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty  
22 factors in [section 1].

23 (2) The department may institute and maintain in the name of the state any enforcement proceedings  
24 under this section. Upon request of the department, the attorney general or the county attorney of the county  
25 of violation shall petition the district court to impose, assess, and recover the civil penalty. Penalties are also  
26 recoverable in an action brought by the department. The action must be brought in the district court of the first  
27 judicial district, Lewis and Clark County, or in the district court of the county in which the violation occurred OR,  
28 IF MUTUALLY AGREED ON BY THE PARTIES IN THE ACTION, IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT, LEWIS  
29 AND CLARK COUNTY.

30 (3) Action under this section does not bar enforcement of this part, rules adopted under this part, or

orders of the department or the board.

(4) Money collected under this section must be deposited in the state general fund."

**Section 21.** Section 75-11-525, MCA, is amended to read:

**"75-11-525. Administrative penalties for violations -- appeals -- venue for hearings.** (1) (a) A person who violates any of the provisions of this part or any rules promulgated under the authority of this part may be assessed and ordered by the department to pay an administrative penalty not to exceed \$500 for each violation. This limitation on administrative penalties applies only to penalties assessed under this section. Each occurrence of the violation and each day that it remains uncorrected constitutes a separate violation. The department may suspend a portion of the administrative penalty assessed under this section if the condition that caused the assessment of the penalty is corrected within a specified time. Assessment of an administrative penalty under this section may be made in conjunction with any order or other administrative action authorized by this chapter.

(b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty factors in [section 1].

(2) When the department assesses an administrative penalty under this section, it must have written notice served personally or by certified mail on the alleged violator or the violator's agent. For purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:

(a) the provision alleged to be violated;

(b) the facts alleged to constitute the violation;

(c) the amount of the administrative penalty assessed under this section;

(d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused the assessment of the penalty;

(e) the nature of any corrective action that the department requires, whether or not a portion of the penalty is to be suspended;

(f) as applicable, the time within which the corrective action is to be taken and the time within which the administrative penalty is to be paid;

(g) the right to appeal or to a hearing to mitigate the penalty assessed and the time, place, and nature of any hearing; and

(h) that a formal proceeding may be waived.

(3) The department shall provide each person assessed a penalty under this section an opportunity for a hearing to either contest the alleged violation or request mitigation of the penalty. The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing conducted under this section. If a hearing is held under this section, it must be held in Lewis and Clark County or the county in which the alleged violation occurred. This subsection does not apply until the department gives written notice, served personally or by certified mail, to the alleged violator or the violator's agent. For the purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:

- (a) the provision allegedly violated;
- (b) the facts that constitute the alleged violation;
- (c) the specific nature of any corrective action that the department requires, estimated costs of compliance with the action, and where to receive help to correct the alleged violation; and
- (d) a timetable that a reasonable person would consider appropriate for compliance with the alleged violations.

(4) The department shall publish a schedule of maximum and minimum penalties for specific violations. In determining appropriate penalties for violations, the department shall consider the gravity of the violations and the potential for significant harm to the public health or the environment. In determining the appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused the penalty assessment, the department shall consider the cooperation and the degree of care exercised by the person assessed the penalty, how expeditiously the violation was corrected, and whether significant harm resulted to the public health or the environment from the violation.

(5) If the department is unable to collect an administrative penalty assessed under this section or if a person fails to pay all or any portion of an administrative penalty assessed under this section, the department may take action in district court to recover the penalty amount and any additional amounts assessed or sought under this chapter. The action must be brought in the district court of the first judicial district, Lewis and Clark County, or in the district court of the county in which the violation occurred OR, IF MUTUALLY AGREED ON BY THE PARTIES IN THE ACTION, IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT, LEWIS AND CLARK COUNTY.

(6) Action under this section does not bar action under this chapter or any other remedy available to the department for violations of underground storage tank laws or rules promulgated under those laws.

(7) Administrative penalties collected under this section must be deposited in the state general fund."

1           **Section 22.** Section 75-20-408, MCA, is amended to read:

2           **"75-20-408. Penalties for violation of chapter -- civil action by attorney general actions to enforce.**

3       (1) (a) Whoever commences to construct or operate a facility without first obtaining a certificate required under  
4       75-20-201 or a waiver ~~thereof~~ of the certificate under 75-20-304(2) or, having first obtained a certificate,  
5       constructs, operates, or maintains a facility ~~other than~~ not in compliance with the certificate or violates any other  
6       provision of this chapter or any rule or order adopted ~~thereunder~~ under this chapter or knowingly submits false  
7       information in any report, 10-year plan, or application required by this chapter or rule or order adopted  
8       ~~thereunder~~ under this chapter or causes any of the aforementioned acts to occur is liable for a civil penalty of  
9       not more than \$10,000 for each violation. Penalties assessed under this section must be determined in  
10      accordance with the penalty factors in [section 1].

11           (b) Each day of a continuing violation constitutes a separate offense.

12           (c) ~~The penalty is recoverable in a civil suit brought by the attorney general on behalf of the state in the~~  
13      ~~district court of the first judicial district of Montana. Penalties are recoverable in an action brought by the~~  
14      ~~department. The action must be brought in the district court of the first judicial district, Lewis and Clark County,~~  
15      ~~or in the district court of the county in which the violation occurred OR, IF MUTUALLY AGREED ON BY THE PARTIES IN~~  
16      ~~THE ACTION, IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT, LEWIS AND CLARK COUNTY.~~

17           (2) Whoever purposely or knowingly ~~and willfully~~ violates subsection (1) shall be fined not more than  
18      \$10,000 for each violation or imprisoned for not more than 1 year, or both. Each day of a continuing violation  
19      constitutes a separate offense.

20           (3) In addition to any penalty provided in subsection (1) or (2), whenever the department determines  
21      that a person is violating or is about to violate any of the provisions of this section, it ~~may refer the matter to the~~  
22      ~~attorney general who~~ may bring a civil action on behalf of the state in the district court of the first judicial district  
23      of Montana, IF MUTUALLY AGREED ON BY THE PARTIES IN THE ACTION, or in the district court of the county in which  
24      the violation occurred or imminent violation will occur, for injunctive or other appropriate relief against the  
25      violation and to enforce this chapter or a certificate issued ~~hereunder~~ under this chapter. Upon a proper showing,  
26      a permanent or preliminary injunction or temporary restraining order ~~shall~~ must be granted without bond.

27           ~~(4) The department shall also enforce this chapter and bring legal actions to accomplish the~~  
28      ~~enforcement through its own legal counsel.~~

29           ~~(5)(4)~~ All fines and penalties collected ~~shall~~ must be deposited in the state special revenue fund for the  
30      use of the department in administering this chapter."

1  
2       **Section 23.** Section 76-4-109, MCA, is amended to read:

3       **"76-4-109. Penalties.** (1) A person violating any provision of this part, except 76-4-122(1), or any rule  
4 or order issued under this part is guilty of an offense and subject to a fine ~~of~~ in an amount not to exceed \$1,000.

5       (2) (a) In addition to the fine specified in subsection (1), a person who violates any provision of this part  
6 or any rule or order issued under this part is subject to a civil penalty in an amount not to exceed \$1,000. Each  
7 day of violation constitutes a separate violation.

8       (b) Penalties assessed under this subsection (2) must be determined in accordance with the penalty  
9 factors in [section 1]. An action to recover penalties must be brought in the district court of the first judicial  
10 district, Lewis and Clark County, or in the district court of the county in which the violation occurred OR, IF  
11 MUTUALLY AGREED ON BY THE PARTIES IN THE ACTION, IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT, LEWIS  
12 AND CLARK COUNTY.

13       (3) Penalties imposed under subsection (1) or (2) do not bar enforcement of this part or rules or orders  
14 issued under it by injunction or other appropriate remedy.

15       (4) The purpose of this section is to provide additional and cumulative remedies."  
16

17       **Section 24.** Section 82-4-141, MCA, is amended to read:

18       **"82-4-141. Violation -- penalty.** (1) A person or operator who violates any of the provisions of this part  
19 or rules or orders adopted under this part shall pay a civil penalty of not less than \$100 or more than \$1,000 for  
20 the violation and an additional civil penalty of not less than \$100 or more than \$1,000 for each day during which  
21 a violation continues and may be enjoined from continuing ~~such the~~ violations as provided in this section. These  
22 penalties ~~shall be~~ are recoverable in ~~any an~~ an action brought ~~in the name of the state of Montana~~ by the ~~attorney~~  
23 ~~general~~ department in the district court of the first judicial district, ~~of this state in and for the county of Lewis and~~  
24 ~~Clark County,~~ or in the district court having jurisdiction of the defendant.

25       (2) ~~The department may attorney general shall, upon the request of the director, sue for the recovery~~  
26 ~~of the penalties provided for in this section and bring an action for a restraining order, temporary injunction, or~~  
27 ~~permanent injunction against an operator or other person violating or threatening to violate an order adopted~~  
28 ~~under this part.~~

29       (3) A person who ~~willfully~~ purposely or knowingly violates any of the provisions of this part or any  
30 determination or order adopted under this part ~~which that~~ has become final is guilty of a misdemeanor and shall

1 be fined not less than \$500 and not more than \$5,000. Each day on which a violation occurs constitutes a  
2 separate offense.

3 (4) Penalties assessed under this section must be determined in accordance with the penalty factors  
4 in [section 3]."

5  
6 **Section 25.** Section 82-4-254, MCA, is amended to read:

7 **"82-4-254. Violation -- penalty -- waiver.** (1) (a) Except as provided in subsection (2), a person or  
8 operator who violates any of the provisions of this part, rules or orders adopted under this part, or term or  
9 condition of a permit and any director, officer, or agent of a corporation who ~~willfully~~ purposely or knowingly  
10 authorizes, orders, or carries out a violation shall pay a civil penalty of not less than \$100 or more than \$5,000  
11 for the violation and an additional civil penalty of not less than \$100 or more than \$5,000 for each day during  
12 which a violation continues and may be enjoined from continuing the violations as provided in this section. ~~Any~~  
13 A person or operator who fails to correct a violation within the period permitted by law, rule of the board, or order  
14 of the department must be assessed a penalty of not less than \$750 for each day, up to 30 days, during which  
15 the failure or violation continues.

16 (b) Penalties assessed under this section must be determined in accordance with the penalty factors  
17 in [section 3].

18 (c) The period permitted for correction of a violation does not, in the case of any review proceeding  
19 under 82-4-251(6), end until entry of a final order suspending the abatement requirements or until entry of an  
20 order of court ordering suspension of the abatement requirements. If the failure to abate continues for more than  
21 30 days, the department shall, within 30 days after the 30-day period, take appropriate action pursuant to  
22 82-4-251(3) or request action under subsection (4) or (6) of this section.

23 (2) The department may waive the civil penalty for a minor violation of this part, a rule or order adopted  
24 under this part, or a term or condition of a permit if the department determines that the violation is not of potential  
25 harm to public health, public safety, or the environment and does not impair the administration of this part. The  
26 board shall adopt rules to implement and administer a procedure for waiver of a penalty under this subsection.

27 (3) The department shall notify the person or operator of the violation. By filing a written request within  
28 20 days of receipt of the notice of violation, stating the reason for the request, the person or operator is entitled  
29 to a hearing before the board under 82-4-206 on the issues of whether the alleged violation has occurred and  
30 whether the penalty proposed to be assessed is proper. The department shall issue a statement of proposed

1 penalty no more than 10 days after issuing the notice of violation. After a hearing, the board shall make findings  
2 of fact, shall issue a written decision as to the occurrence of the violation and, if the board finds that the violation  
3 occurred, the amount of penalty warranted, and shall order the payment of the penalty. If the time for requesting  
4 a hearing expires without a hearing request, the department shall make the findings of fact and issue the written  
5 decision and order. The person or operator shall remit the amount of the penalty within 30 days of the order. If  
6 the person or operator wishes to obtain judicial review of the assessment, the person or operator shall submit  
7 with the penalty a statement that the penalty is being paid under protest and the department shall hold the  
8 payment in escrow until judicial review is complete. Any person or operator who fails to request and submit  
9 testimony at the hearing provided for in this subsection or who fails to pay the assessed penalty under protest  
10 within 30 days of the order assessing the penalty forfeits the right to seek judicial review of the violation or  
11 penalty determinations. These penalties are recoverable in ~~any an~~ action brought ~~in the name of the state of~~  
12 ~~Montana~~ by the department attorney general in the district court of the first judicial district, Lewis and Clark  
13 County, IF MUTUALLY AGREED ON BY THE PARTIES IN THE ACTION, or in the district court having jurisdiction over the  
14 defendant.

15 (4) The ~~attorney general shall, upon request of the director of the department~~ may, ~~sue for the recovery~~  
16 ~~of the penalties provided for in this section and~~ bring an action for a restraining order or temporary or permanent  
17 injunction against an operator or other person who:

18 (a) violates, threatens to violate, or fails or refuses to comply with any order or decision issued under  
19 this part;

20 (b) interferes with, hinders, or delays the department in carrying out the provisions of this part;

21 (c) refuses to admit an authorized representative of the department to the permit area;

22 (d) refuses to permit inspection of the permit area by an authorized representative of the department;

23 (e) refuses to furnish any information or report requested by the department in furtherance of the  
24 provisions of this part; or

25 (f) refuses to permit access to and copying of records that the department determines to be necessary  
26 in carrying out the provisions of this part.

27 (5) Any relief granted by a court under subsection (4)(a) continues in effect until the completion or final  
28 termination of all proceedings for review of relief granted under this part unless, prior to the final determination,  
29 the district court granting the relief sets it aside or modifies it.

30 (6) A person who violates any of the provisions of this part or any determination or order adopted under

1 this part or who ~~willfully~~ purposely or knowingly violates any permit condition issued under this part is guilty of  
2 a misdemeanor and shall be fined an amount not less than \$500 and not more than \$10,000 or be imprisoned  
3 for not more than 1 year, or both. Each day on which the violation occurs constitutes a separate offense.

4 (7) ~~Any~~ A person who knowingly makes any false statement, representation, or certification or knowingly  
5 fails to make any statement, representation, or certification in any application, record, report, plan, or other  
6 document filed or required to be maintained pursuant to this part shall upon conviction be punished by a fine of  
7 not more than \$10,000 or by imprisonment for not more than 1 year, or both.

8 (8) ~~Any~~ A person who except as permitted by law ~~willfully~~ purposely or knowingly resists, prevents,  
9 impedes, or interferes with the department or its agents in the performance of duties pursuant to this part shall  
10 be punished by a fine of not more than \$5,000 or by imprisonment for not more than 1 year, or both.

11 (9) An employee of the department performing any function or duty under this part may not have a direct  
12 or indirect financial interest in any strip- or underground-coal-mining operation. A person who knowingly violates  
13 the provisions of this subsection shall upon conviction be punished by a fine of not more than \$2,500 or by  
14 imprisonment of not more than 1 year, or both."

15  
16 **Section 26.** Section 82-4-361, MCA, is amended to read:

17 **"82-4-361. Violation -- penalties -- waiver.** (1) (a) The department may assess an administrative civil  
18 penalty of not less than \$100 or more than \$1,000 for each of the following violations and an additional  
19 administrative civil penalty of not less than \$100 or more than \$1,000 for each day during which the violation  
20 continues and may bring an action for an injunction from continuing the violation against:

21 (i) a person or operator who violates a provision of this part, a rule or order adopted under this part, or  
22 a term or condition of a permit; or

23 (ii) any director, officer, or agent of a corporation who ~~willfully~~ purposely or knowingly authorizes, orders,  
24 or carries out a violation of a provision of this part, a rule or order adopted under this part, or a term or condition  
25 of a permit.

26 (b) If the violation created an imminent danger to the health or safety of the public or caused significant  
27 environmental harm, the maximum penalty is \$5,000 for each day of violation.

28 (2) Penalties assessed under this section must be determined in accordance with the penalty factors  
29 in [section 3]. ~~The department shall take into account the following factors in determining whether to institute a~~  
30 ~~civil penalty action and in determining the penalty amount:~~



1 ~~—— (a) the nature, circumstances, extent, and gravity of the violation;~~  
2 ~~—— (b) the violator's prior history of violations;~~  
3 ~~—— (c) the economic benefit or savings, if any, to the violator resulting from the violator's action;~~  
4 ~~—— (d) the amounts voluntarily expended by the violator to address or mitigate the violation or impacts of~~  
5 ~~the violation; and~~  
6 ~~—— (e) other matters that justice may require.~~

7 (3) The department may bring an action for a restraining order or a temporary or permanent injunction  
8 against an operator or other person violating or threatening to violate an order issued under this part.

9 (4) The department shall notify the person or operator of the violation. The department shall issue a  
10 statement of proposed penalty within 30 days after issuing the notice of the violation. The person or operator,  
11 by filing a written request stating the reason for the request within 20 days of receipt of the notice of proposed  
12 penalty, is entitled to a hearing before the board on the issues of whether the alleged violation has occurred and  
13 whether the penalty proposed to be assessed is proper. After the hearing, the board shall make findings of fact  
14 and issue a written decision as to the occurrence of the violation and, if the board finds that the violation  
15 occurred, the amount of penalty warranted. The board shall order the payment of a penalty in that amount. If the  
16 time for requesting a hearing expires without a hearing request, the department shall make the findings of fact  
17 and issue the written decision and order. The person or operator shall remit the amount of the penalty or petition  
18 for judicial review within 30 days of receipt of the order. A person or operator who fails to request the hearing  
19 provided for in this subsection or who fails to petition for judicial review within 30 days of receipt of the order  
20 forfeits that person's or operator's right to seek judicial review of the violation or penalty determinations. These  
21 penalties are recoverable in an action brought by the department in district court.

22 (5) Legal actions for injunctive relief under this section must be brought in the district court of the county  
23 in which the alleged violation occurred or, if mutually agreed to by the parties to the action, in any other judicial  
24 district. Legal actions for review of penalty orders or for recovery of penalties must be brought in the district court  
25 in the first judicial district, Lewis and Clark County."  
26

27 **Section 27.** Section 82-4-441, MCA, is amended to read:

28 **"82-4-441. Penalty -- enforcement.** (1) The department may assess against a person who violates any  
29 of the provisions of this part, rules adopted under this part, or provisions of a reclamation permit:

30 (a) a civil penalty of not less than \$100 or more than \$1,000 for the violation; and

(b) an additional civil penalty of not less than \$100 or more than \$1,000 for each day during which a violation continues following the service of notice of the violation.

(2) Penalties assessed under this section must be determined in accordance with the penalty factors in [section 3]. ~~The department shall take into account the following factors in determining whether to institute a civil penalty action and in determining the penalty amount:~~

~~—— (a) the nature, circumstances, extent, and gravity of the violation;~~

~~—— (b) the violator's prior history of violations within the past 3 years;~~

~~—— (c) the economic benefit or savings, if any, to the violator resulting from the violator's action;~~

~~—— (d) the amounts voluntarily expended by the violator to address or mitigate the violation or impacts of the violation; and~~

~~—— (e) other matters that justice may require to decrease the amount of penalty.~~

(3) The department shall notify the person or operator of the violation. The department shall issue a statement of proposed penalty, including the penalty calculation that identifies and describes the factors considered pursuant to subsection (2), no more than 10 days after issuing the notice of violation. After a hearing provided for in 82-4-427, the board shall make findings of fact, issue a written decision as to the occurrence of the violation and, if the board finds that the violation occurred, the amount of penalty warranted, and order the payment of a penalty in that amount. If the time for requesting a hearing expires without a hearing request, the department shall make the findings of fact and issue the written decision and order. The person or operator shall remit the amount of any penalty within 30 days of the order. If the person or operator wishes to obtain judicial review of the assessment, the person or operator shall submit with the penalty a statement that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is complete. A person or operator who fails to request and submit testimony at the hearing provided for in this subsection or who fails to pay the assessed penalty under protest within 30 days of the order assessing the penalty forfeits the right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in an action brought by the department in the district court of the first judicial district, Lewis and Clark County, IF MUTUALLY AGREED ON BY THE PARTIES IN THE ACTION, or in the district court of the county in which the opencut mine is located.

(4) The department may bring an action to enjoin an operator or other person violating or threatening to violate this part, rules adopted pursuant to this part, or a permit issued pursuant to this part in the district court of the first judicial district, Lewis and Clark County, IF MUTUALLY AGREED ON BY THE PARTIES IN THE ACTION, or in

the district court of the county in which the opencut mine is located."

**NEW SECTION. Section 28. Codification instruction.** (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 75 and Title 76, and the provisions of Title 75 and Title 76 apply to [sections 1 and 2].

(2) [Sections 3 and 4] are intended to be codified as an integral part of Title 82, chapter 4, and the provisions of Title 82, chapter 4, apply to [sections 3 and 4].

**NEW SECTION. Section 29. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**NEW SECTION. Section 30. Contingent voidness.** (1) If any portion of [section 3] is disapproved by the United States secretary of the interior pursuant to 30 CFR 732.17, then [section 25] and the reference in [section 3(4)] to 82-4-254 are void.

(2) Within 15 days of the effective date of the disapproval under subsection (1), the department of environmental quality shall notify the code commissioner, certifying that the disapproval under subsection (1) has occurred.

**NEW SECTION. Section 31. Effective date.** [This act] is effective January 1, 2006.

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